

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION

ORIGINAL
ILLINOIS
COMMERCE COMMISSION

2004 MAR 10 A 10:37

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CHIEF CLERK'S OFFICE

Novacon Holdings LLC)	
)	
Application for a certificate of)	
of local and interexchange authority)	ICC Docket No. 04-0064
to operate as a reseller and facilities based carrier)	
of telecommunications services)	
throughout the State of Illinois)	

RESPONSE OF BRUCE LEVIN TO
NOVACON HOLDINGS LLC'S MOTION TO STRIKE

Bruce Levin ("Levin"), for his Response to the Motion to Strike filed by the applicant, Novacon Holdings, LLC on March 2, 2004 ("Applicant" or "Holdings"), states as follows:

1. Virtually all of the assertions in Applicant's Motion to Strike the Informal Complaint appended to Levin's Petition to Intervene are objectionable.
2. First, the Motion to Strike is now moot, insofar as the Court has granted Levin's Petition to Intervene, to which the Informal Complaint was appended and which was made a part thereof. An informal complaint is not "evidence", and in granting the Petition to Intervene, doubtless the Court did not treat it as such.

3. Assuming, however, that the Motion to Strike is not now moot, Levin will respond to substance of the assertions. In short, the Petition to Strike, just like Applicant's response in opposition to Levin's Petition to Intervene, is meritless.

4. On page 1 of the Motion to Strike, Applicant states that "it would be a mockery of the Commission's process to allow a competitor of Novacon Holdings, such as Mr. Levin, to delay certification or expand the scope of this proceeding by raising issues that would never provide any basis whatsoever for denying certification in this day and age." A pattern is being established by Applicant. First, in the name of Novacon, LLC, it presented, on February 2, 2004, a petition to approve an interconnection agreement with Illinois Bell Telephone Company, in docket 03-0750, without bothering to tell either Illinois Bell or the Court that Novacon, LLC no longer held a valid CLEC certification – Novacon, LLC having purported to have transferred its CLEC license to Applicant, Novacon Holdings, LLC, on January 10, 2004. Next, Applicant filed a baseless objection to Levin's Petition to Intervene, on the theory that, despite the truth of Levin's statements that Applicant was operating without a license, somehow the Commission shouldn't hear this because, alas, Levin was supposedly a *competitor* of the Applicant. This was of course baseless because Applicant is well aware that alleged competitors have time and again been granted standing to intervene in CLEC application proceedings before this Commission. Indeed, SBC (Illinois Bell) is the ultimate competitor of any CLEC in the State of Illinois. The third example of this pattern is Applicant's effort, yet again, to try to dictate to the Commission what, in Applicant's wisdom, is relevant in connection with its pending CLEC application. One of the things Applicant doesn't believe is relevant, apparently, is Applicant's truthfulness in its

application to this Commission. Indeed, however, at the March 1, 2004 hearing, staff counsel for the Commission indicated that he intended to use some of the information Mr. Levin presented in the Informal Complaint and that this information indeed **was relevant** to the issue of certification.

5. On page 2 of its Motion to Strike, Applicant states: "Every allegation and issue set forth in the Informal Complaint is entirely new. None of these issues have been raised before by Mr. Levin in any of his pleadings." What pleadings is Applicant talking about? This is a *brand new* proceeding. The *very first and only* pleading Levin has filed in this docket is the very Petition to Intervene to which is attached the Informal Complaint, which, in a twist of circular logic worthy of Lewis Carroll, Applicant now complains is "entirely new." The whole proceeding is entirely new. It was filed one month ago.

6. On page 2, Applicant states, "Count II [of the Informal Complaint] alleges that Novacon violated Section 13-406 of the Act by abandoning or discontinuing service to its customers." Then comes this remarkable statement: "The only person who feels that that is somehow improper is Mr. Levin." (emphasis in original). This is remarkable as it amounts to an admission that Applicant apparently believes it is not required to follow the law and can serve as its own judge and jury in this regard. Levin points out, as the Commission is aware, that the parties in ICC Dockets 00-0456, 02-0060, 03-0134 complied with Section 13-406 of the Act in like circumstances. If Applicant is allowed to simply ignore the express requirements and dictates of the Public Utilities Act, how will the Commission be able to enforce Section 13-406 in the future?

7. Applicant goes on to state, also on page 2 of its Motion to Strike: "Count III alleges that Novacon LLC violated Section 7-203 of the Act by transferring its license to Novacon Holdings. Again, Mr. Levin is alleging a violation of Article 7, which applies to neither Novacon LLC nor Novacon Holdings. Additionally, that allegation ignores the fact that this very proceeding in which Novacon Holdings is seeking a certificate would render any issue about the transfer moot." Applicant believes it is not required to follow the law and can serve as its own judge and jury. Again, if Applicant is allowed to simply ignore the express requirements and dictates of the Public Utilities Act, how will the Commission be able to enforce Section 7-203 in the future?

WHEREFORE, Bruce Levin. requests Applicant's Motion to Strike be denied and that the Commission award such other relief as it deems just.

Respectfully submitted,

BRUCE LEVIN

By: Edward S. Weil

Dated: March 5, 2004


Edward S. Weil
Schwartz, Cooper, Greenberger & Krauss
180 N. LaSalle St., Ste. 2700
Chicago, IL 60601
(312) 346-1300
eweil@schwartzcooper.com

VERIFICATION

STATE OF ILLINOIS)

COUNTY OF ~~COOK~~ Lake)

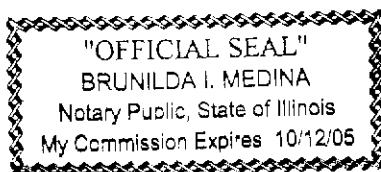
Bruce Levin, being duly sworn upon oath, deposes and states that he has read the foregoing Response of Bruce Levin to Motion to Strike, in the Illinois Commerce Commission Docket no. 04-0064, and knows the contents thereof; and that to the best of his knowledge, information, and belief, maintains that the contents of this document is true and correct.



Bruce Levin
1180 St. Johns Av.
Highland Park, IL 60035
847-433-2500 ex 153
blevin@levincom.com

SUBSCRIBED and SWORN to
Before me this 6th day of March, 2004

Brunilde F. Medina
Notary Public



**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Novacon Holdings LLC

Application for a certificate of
of local and interexchange authority
to operate as a reseller and facilities based carrier
of telecommunications services
throughout the State of Illinois

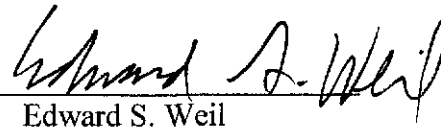
)
)
)
)
)
)
)

ICC Docket No. 04-0064

NOTICE OF FILING

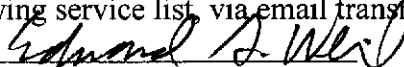
PLEASE TAKE NOTICE that I have on this 5th day of March, 2004 caused to be filed via Federal Express, the Response of Bruce Levin to Motion to Strike, with the Chief Clerk of the Illinois Commerce Commission:

Elizabeth Rolando
Chief Clerk of the Illinois Commerce Commission
527 East Capitol Avenue,
Springfield, Illinois 62701


Edward S. Weil

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of March, I served true and correct copies of the **RESPONSE OF BRUCE LEVIN TO NOVAACON HOLDINGS LLC'S MOTION TO STRIKE**, upon the Illinois Commerce Commission, and on all parties of record in this proceeding, as listed in the following service list, via email transmission.


Edward S. Weil

John Riley Administrative Law Judge Illinois Commerce Commission 160 N. LaSalle Street Chicago, IL 60601 jriley@icc.state.il.us	Matthew L. Harvey Sean R. Brady Illinois Commerce Commission Office of General Counsel 160 North LaSalle Street, Suite C-800 Chicago, Illinois 60601 312-793-1556 (fax) mharvey@icc.state.il.us sbrady@icc.state.il.us
William H. Wentz Fewkes Wentz & Strayer 184 Shuman Boulevard, Suite 250 Naperville, Illinois 60563 630-527-8552 630-527-8636 (fax) billwentz@businesslegalexperts.com	Thomas Rowland Attorney for Applicant Rowland & Moore 77 West Wacker Drive, Suite 4600 Chicago, Illinois 60601 312-803-1000 312-803-0953 (fax) tom@telecomreg.com
Carmen L. Fosco Office of General Counsel Illinois Commerce Commission 160 North LaSalle Street Suite C-800 Chicago, Illinois 60601 312-814-2865 312-793-1556 (fax) cfosco@icc.state.il.us	Kurt Scholle Managing Partner Novacon Holdings LLC 1895C Rohlwing Road Rolling Meadows, Illinois 60008 kscholle@novacon.net
Robert Koch Case Manager Illinois Commerce Commission 527 East Capitol Avenue Springfield, Illinois 62701 217-782-1377 (fax) rkoch@icc.state.il.us	Bruce Levin 1180 St. Johns Avenue Highland Park, Illinois 60035 847-433-2500 blevin@levincom.com

<p>James L. Kopecky Attorney for Bruce Levin James L. Kopecky, P.C. 350 North LaSalle Street, Suite 800 Chicago, Illinois 60610 312-527-3966 312-527-3968 (fax) jim@jlkopecky.com</p>	
---	--